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Caribbean Shiprider Agreements: Sunk by Banana Trade War?

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COMMENT

CARIBBEAN SHIPRIDER AGREEMENTS: SUNK BY BANANA TRADE WAR?

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I. INTRODUCTION

The United States and the European Community (EC) vigorously fought the banana trade war for over six years.¹ This long running dispute resulted from complaints by the United States and four other Latin American countries,² that the EC was using its banana regime to protect its ex-colonies to the detriment of the Latin American banana producing countries.³ The EC countered with the argument that this regime was necessary to stabilize the struggling economies of these smaller nations since the alternative for many is the production of drugs.⁴ The United States attempted to put an end to the escalating tensions by threatening to impose tariffs up to 100% on selected EC goods if the regime was not changed.⁵

1. See generally David E. Sanger, *Miffed at Europe, U.S. Raises Tariffs for Luxury Goods*, N.Y. TIMES, Mar. 4, 1999, at A1.

2. See WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Bananas: Request for Consultations by Ecuador, Guatemala, Honduras, Mexico and the United States*, WT/DS27/1 (Feb. 12, 1996) [hereinafter EC-Banana Regime]. The four Latin American countries joining the United States in insisting that the EC change its regime are Ecuador, Guatemala, Honduras and Mexico [hereinafter G-5 countries].

3. The G-5 countries allege that the EC restrictions improperly denied their banana producers and exporters access to the EC market through the use of quotas and import licenses. See *id.*

4. See Lorraine Woellert, *Latin American Bananas Focus of EU Import Proposal*, WASH. TIMES, Jan. 15, 1998, at B10, available in LEXIS, News Library, CURNWS File.

5. See UNITED STATES TAKES CUSTOMS ACTION ON EUROPEAN IMPORTS, U.S.T.R. PRESS RELEASE 99-17 (Mar. 3, 1999) available in <<http://www.ustr.gov/releases/1999/03/99-17.html>> (visited Feb. 27, 2000). The United States rejected the changes made to the 1998 EC that triggered the threat of the imposition of tariffs. See USTR BARSHEFSKY REACTS TO EC BANANA DECISION, U.S.T.R. PRESS RELEASE 98-63 (June 1998) available in <<http://www.ustr.gov/releases/1998/06/98-63.pdf>> (visited Feb. 27, 2000). See also Tani Freedman, *Slippery Slope? Washington Steps up Trade Threats in EU Banana Drama*, AGENCE FRANCE-PRESSE, Oct. 21, 1998, available in 1998 WL 16623267. See generally U.S. RESPONSE TO EU BANANA IMPORT REGIME, USTR PRESS

Caught in the middle of this transcontinental barrage are the small Caribbean nations who stand to suffer increased economic hardship if the banana regime is abolished.⁶ Coupled with this is the very real fear for the governments of these nations that their banana farmers will turn to drug production out of necessity.⁷ This has led to a rallying call from among the leaders of the Caribbean Community (CARICOM)⁸ to postpone renewal of their "Shiprider" Maritime Counter-drug Agreements⁹ with the United States by tying its renewal to the resolution of the banana issue.¹⁰

RELEASE 98-113 (Dec. 21, 1998) available in <<http://www.ustr.gov/releases/1998/12/98-113.pdf>> (visited Feb. 27, 2000).

6. See Woellert, *supra* note 4.

7. See Nora Boustany, *Yes We Have No Banana Pact*, WASH. POST, Nov. 20, 1998, at A50, available in LEXIS, News Library, CURNWS File.

8. At the signing of the Treaty of Chaguaramas in 1973, the Commonwealth Caribbean Heads of Government founded the Caribbean Community and Common Market (CARICOM). See 12 I.L.M. 1033 (1973). CARICOM succeeded the Caribbean Free Trade Association (CARIFTA), which was established in 1968. CARICOM works for the economic integration of the member countries through the common market, coordination of the foreign policies of member states, and functional co-operation (especially in areas of social and human endeavor). See CARICOM Website, <<http://www.caricom.org>> [hereinafter CARICOM Website]. The 15 members nations are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. See *id.*

9. The purpose of these bilateral agreements between the various Caribbean nations and the United States, is to combat illicit maritime drug trafficking. See generally Joseph Kramek, *Bilateral Maritime Counter-Drug and Immigrant Interdiction Agreements: Is this the World of the Future?*, 31 U. MIAMI INTER-AM. L. REV. 121 (2000). See also Agreement Between the United States and Trinidad and Tobago Concerning Maritime Counter-drug Operations, CTIA Doc. 8668.000, DOS: 96-58 (entered into force Mar. 4, 1996) [hereinafter T & T Shiprider].

10. Addressing a town meeting in Castries Sunday, which included U.S. Congressmen, business executives, and elected officials on U.S.-Caribbean relations, Barbados's Foreign Minister Billie Miller said that Barbados felt "very strongly" about the need to express solidarity with the Eastern Caribbean states over U.S. threats to the banana regime. See *B'dos Wants Joint Banana/Shiprider Agreement*, JAM. GLEANER, Nov. 12, 1998.

"In recent months, we in the Barbados Cabinet have felt so strongly about this that we would like to urge CARICOM heads not to renew Shiprider agreements without they being tied to a resolution of the banana issue," [Miller] told the meeting held as part of the Carib News Multi-national conference.

The Barbados Foreign Minister said the entire Caribbean was also disappointed with the failure of President Clinton to focus on trade and economic issues as promised when he met Caribbean leaders last year, while matters pertaining to justice and security had been put on a fast track.

She said the US had a vested interest in and had largely pursued justice

This situation has serious implications because approximately "half the population of the Caribbean rely on the banana industry to supply their basic needs such as food, shelter and education."¹¹ Compounding this problem is a decrease in aid level¹² and an increase in the barriers to trade¹³ that have fueled anti-U.S. feelings,¹⁴ as well as anti-World Trade Organization (WTO)¹⁵ sentiment among governmental officials and representatives of the private sector.¹⁶ The growing fear is that

and security issues as they were associated with the problem of narcotics control, but had failed to give adequate attention to trade and economic matters which were vital to Caribbean states.

Id.

11. "Take away the banana industry and the economy collapses," Phil Bloomer of British-based relief agency Oxfam said in a statement issued on behalf of all U.K. development agencies. *Banana Import Reforms May Trouble Caribbean*, OSCEOLA SENTINEL, July 3, 1998, at 4. The development agencies said planned reforms would mean trouble for the Caribbean industry because it would be unable to compete with cheaper bananas produced in Africa by multinationals such as Del Monte and Dole. *See id.*

12. *See* George Gedda, *Caribbean Disposition Toward U.S. Not so Sunny*, ASSOCIATED PRESS POL. SERV., Jan. 16, 1998, available in 1998 WL 7376958.

13. *See id.* Since the end of the Cold War, not much has gone right in U.S. relations with Caribbean countries. "The Caribbean used to be a major object of U.S. foreign policy. Now they don't even know it's there," laments Peter Johnson, a former career diplomat who tries to promote U.S. business ties to the region. *Id.* "American diplomats in the region find Caribbean leaders fearful and resentful, wondering whether economic globalization will leave them destitute." *Id.*

14. *See id.*

15. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT 1947]. *See also* Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND VOL. 5 (1994), 33 I.L.M. 1125. *See generally* General Agreement on Tariffs and Trade—Multilateral Trade Negotiations (The Uruguay Round): Agreement Establishing the Multilateral Trade Organization, Dec. 15, 1993, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND VOL. 1 (1994), 33 I.L.M. 13 [hereinafter GATT 1994].

16. *See Jamaica Envoy: Anti-WTO Sentiment Rising In Caribbean*, DOW JONES INT'L NEWS, Dec. 16, 1998. Jamaican Ambassador Richard Bernal, along with the ambassadors from Belize and St. Vincent and the Grenadines, spoke to reporters in Washington D.C. on December 16 to discuss the impact of the WTO decision. Bernal stated:

Support for continued membership by Caribbean countries in the World Trade Organization is eroding because of the WTO ruling that is expected to sharply reduce banana exports to Europe . . . Caribbean countries generally have been favorably disposed toward multilateral institutions, noting that soon after independence all joined the World Bank, International Monetary and the GATT. They saw these institutions as a protective shield, . . . but nowadays sentiment is changing following the WTO ruling.

Id.

removal of the banana industry will cause the Caribbean economies to collapse.¹⁷

This comment discusses the strained relation that has ensued between the United States and the Caribbean nations as a result of the long running banana dispute. The tension has culminated in the threat of the loss of the Shiprider agreements, a threat which the Caribbean nations may use again to gain the upper hand in negotiations. Part II examines the effects of the banana dispute to date. Part III discusses the far reaching implications of the banana dispute on drug production and trafficking within the Region. Part IV explores the ramifications of the Caribbean nations' non-renewal of the Shiprider agreements.

II. BACKGROUND OF THE BANANA DISPUTE

Bananas have long been a subject of dispute in Europe, notably when the Federal Republic of Germany pushed for the inclusion of a Banana Protocol as the price for agreeing to the Treaty Establishing the European Economic Community (EEC).¹⁸ Then in 1975, the EEC members sought to provide economic protection to their former colonies: the African, Caribbean and Pacific (ACP) States. Protectionism was at the heart of the first Lomé Convention, the purpose of which was "safe-guarding the interests of the . . . [ACP] States, whose economies depended to a considerable extent on the exportation of commodities."¹⁹ To this end the EEC established a system of preferences and aid to benefit the ACP countries.²⁰

17. See *Banana Import Reforms May Trouble Caribbean*, *supra* note 11.

18. The EEC was established by the Treaty of Rome, which was signed on March 5, 1957, and entered into force on January 1, 1958. See 298 U.N.T.S. 11. It was not until the Treaty on European Union (known as the Maastricht Treaty) was signed on February 7, 1992, and entered into force on November 1, 1993, did the name change to the European Union (EU). See 1758 U.N.T.S. 3. The Banana Protocol created a tariff quota on Latin American bananas imported into the Federal Republic of Germany. However this protocol only applied to the Federal Republic of Germany and not to the other members of the EEC. See 298 U.N.T.S. 11. See also Jack J. Chen, *Going Bananas: How Can the WTO Heal the Split in the Global Banana Trade Dispute*, 63 *FORDHAM L. REV.* 1283, 1294 (1995).

19. Preamble from European Economic Community-African, Caribbean, & Pacific Countries: Documents from Lomé Meeting, 14 *I.L.M.* 595. See generally Chen, *supra* note 18.

20. See generally MARJORIE LISTER, *THE EUROPEAN COMMUNITY AND THE DEVELOPING WORLD: THE ROLE OF THE LOMÉ CONVENTION* (1988).

However, while the ACP countries benefited from the Lomé agreements, the non-ACP banana producing countries suffered severe economic losses due to the decline in banana exports.²¹ This led a group of five Latin American banana-producing countries—Columbia, Costa Rica, Guatemala, Nicaragua and Venezuela—to file a complaint with the GATT against the EC, alleging violations of GATT principles.²² The system established by the GATT to settle disputes places an emphasis on bilateral resolutions, and only after negotiations are shown to be unsuccessful will a WTO Dispute Settlement Panel (DSP) be convened.²³ The only way a panel ruling achieves legal binding status is if the GATT Council adopts it.²⁴

The DSP concluded that the EC banana system was inconsistent with Article XI.1 (quantitative restrictions)²⁵ as well as Article I (Most-Favoured-Nation clause)²⁶ of GATT 1994. While Article XXIV permits preferential treatment between contracting parties in either a customs union or a free-trade area,²⁷ the type of agreements under the Lomé Convention did

21. See GATT ACTIVITIES 1993: AN ANNUAL REVIEW OF THE WORK OF THE GATT 32 (1994).

22. See *id.* See also Zsolt K. Bessko, *Going Bananas Over EEC Preferences? A Look at the Banana Trade War and the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes*, 28 CASE W. RES. J. INT'L L. 265, 266 n.6 (1996). A Panel was established and subsequently ruled in favor of the Latin American countries. See *id.* See also EEC-Member States' Import Regime for Bananas, GATT Panel Report, June 3, 1993, restricted document, DS32/R. See generally Richard Lyons, *European Union Banana Controversy*, 9 FLA. J. INT'L L. 165 (1994).

23. See Peter Lichtenbaum, *Procedural issues in WTO Dispute Resolution*, 19 MICH. J. INT'L L. 1195, 1199 (1998). These panels consist of experts who review the submissions of the interested parties and then rule on the dispute. See *id.*

24. See *id.*

25. The Panel found that the quantitative restrictions placed on the imports of bananas were inconsistent with the obligation of the general elimination of quantitative restrictions as between contracting parties. See GATT ACTIVITIES 1993, *supra* note 21, at 32-33.

26. Article I bestows on all members of the GATT a "general most-favoured-nation treatment," by stating that "any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in or destined for any country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." GATT 1994, *supra* note 15, art. I. See also GATT ACTIVITIES 1993, *supra* note 21, at 32-33 (where the tariff preference given to the import of bananas from ACP countries was found to be inconsistent with the MFN clause).

27. The purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories. See GATT 1994, *supra* note 15, art. XXIV.4.

not qualify for either of these exceptions.²⁸ The DSP recommended that either the Contracting Parties request that the EC conform to the GATT principles, or the EC could seek to maintain its preferences by seeking an exemption under Article XXV.²⁹ It is notable, however, that this Panel Report was not adopted by the GATT Council.³⁰

The EC expanded on these preferences within the fourth Lomé Convention³¹ (hereinafter Lomé IV) by making allowances that “[p]roducts originating in the ACP States shall be imported into the Community free of customs duties.”³² These preferential provisions contained within the Lomé IV were challenged once again by the Latin American countries as being inconsistent with the principles of GATT, however, this time the EC was able to obtain a waiver allowing the provisions of the Lomé IV to remain in effect until the year 2000.³³

28. See GATT ACTIVITIES 1993, *supra* note 21, at 33; GATT 1994, *supra* note 15, Art. XXIV.8. A customs union is defined as the substitution of a single customs territory for two or more customs territories. A free-trade area is defined as a group of two or more customs territories. Both require reciprocal concessions to all members within the territories, however, with the Lomé Convention, the concessions were one-sided in the favor of the ACP countries. This is the reason why the Panel Report ruled against the EEC's reference to Art. XXIV to justify the preferential treatment awarded to the ACP countries. See *id.*

29. See GATT ACTIVITIES 1993, *supra* note 21, at 33. See also GATT 1994, *supra* note 15, Art. XXV.5, which provides for a waiver of obligations in “exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; *Provided* that any such decision shall be approved by a two-thirds majority of the votes cast.” This essentially means that the EEC could get an exemption for its banana system by presenting to the GATT the “exceptional reasons” why the ACP countries needed to be afforded the protection of the EEC preferential treatment.

30. See GATT ACTIVITIES 1994-1995: A REVIEW OF THE WORK OF THE GATT IN 1994 & 1995, 42 (Apr. 1996).

31. See Fourth AACP-EEC Convention of Lomé, art. 168(1), signed into force in Lomé, Togo, Dec. 15, 1989, 1991 O.J. (L 229) 3 [hereinafter Lomé IV].

32. FOURTH ACP-EEC CONVENTION OF LOMÉ—COMPILATION OF TEXTS XV (1992).

33. See GATT Doc. L/7604 Dec. 19, 1994. The EC requested this waiver citing the need to improve the “standard of living,” and the financial and “economic development of the ACP States.” *Id.* Due to the shift from the GATT to the WTO, the EC had to petition the WTO to extend the Lomé waiver. See *id.* This was because any waiver in effect on the date the WTO Agreement entered into force would terminate, unless extended, two years later. This meant that the Lomé waiver would expire on December of 1996. See WTO Secretariat, *The Fourth ACP-EC Convention of Lomé: Request for an Extension of a Waiver*, GL/108 (Sept. 9, 1996). The extension was granted and allowed the Lomé waiver to remain in place until February 29, 2000. See WTO Secretariat, *The Fourth ACP-EC Convention of Lomé: Extension of Waiver, Decision of 14 Oct. 1996*, WT/L/186 (Oct. 18, 1996).

The most significant changes came in 1993, when the EC adopted Council Regulation 404/93, which created a series of quota restrictions and licensing requirements for non-ACP countries to follow.³⁴ This regulation essentially allows for the tariff-free importation into the EC by traditional ACP banana producers while enforcing tariffs and a quota on the bananas from both non-traditional ACP nations and third-countries.³⁵ Once again the EC found themselves in front of the WTO on allegations that this Regulation was not in accord with many WTO articles.³⁶ The real surprise was that the United States, who is not a banana producing exporter country, joined the Latin American countries in filing a complaint against the EC.³⁷

After failing to reach a settlement on this dispute, the G-5 countries, following the WTO Dispute Settlement

34. See Council Regulation 404/93 on the Common Organisation of the Market in Bananas, 1993 O.J. (L 47) 1. Article 18 states:

1. A tariff quota of two million tonnes (net weight) shall be opened each year for imports of third-country bananas and non-traditional ACP bananas. Within the framework of the tariff quota, imports of third-country bananas shall be subject to a levy of ECU 100 per tonne and imports of non-traditional ACP bananas shall be subject to a zero duty. For the second half of 1993, the volume of the tariff quota shall be set at one million tonnes (net weight).

2. Apart from the quota referred to in paragraph 1,

-imports of non-traditional ACP bananas shall be subject to a levy of ECU 750 per tonne,

-imports of third country bananas shall be subject to a levy of ECU 850 per tonne.

Article 19 lists the licensing requirements:

1. The tariff quota shall be opened from July 1, 1993 for:

(a) 66.5 per cent. to the category of operators who marketed third country and/or non-traditional ACP bananas;

(b) 30 per cent. to the category of operators who marketed third Community and/or traditional ACP bananas;

(c) 3.5 per cent. to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas from 1992.

The import opportunities pursuant to (a) and (b) shall be available to operators established in the Community who marketed on their own accord a minimum quantity of bananas of the above origins, to be determined.

35. See *id.*

36. See *EC-Banana Regime*, *supra* note 2. The G-5 countries allege inconsistencies in GATT 1994 (Articles I-III, X, XI and XIII), the Agreement on Import Licensing Procedures (Articles 1 and 3), the Agreement on Agriculture, the General Agreement on Trade in Services (Articles II, IV, XVI and XVII), and the Agreement on Trade-Related Investment Measures (Articles 2 and 5). See *id.* It is also alleged that these measures produce distortions that appear to nullify or impair the benefits accruing to the complainants. See *id.*

37. See *id.*

Understanding³⁸ (DSU) procedures, requested the establishment of a Panel to examine the EC's banana regime.³⁹ In May 22, 1997, the DSP announced that the EC's banana regime, otherwise known as Regulation 404/93, was in violation of several WTO articles.⁴⁰ The EC launched an appeal on July 11, 1997, protesting nineteen findings of the DSP, one of which was the right of the United States to bring a claim against the EC since it did not have a "legal interest" in the EC banana regime.⁴¹

The WTO Appellate Body (AB) subsequently upheld the DSP's findings of violations caused by the EC banana regime, which the WTO Dispute Settlement Body (DSB) adopted.⁴² The AB agreed with the DSP's finding that there is no explicit requirement in the DSU that Members have a "legal interest" before requesting a panel.⁴³ In addition the AB reasoned that under Article XXIII:1 of the GATT 1994, and Article 3.7 of the

38. See General Agreement on Tariffs and Trade—Multilateral Trade Negotiations (The Uruguay Round): Understanding on Rules and Procedures Governing the Settlement of Disputes, art. 7, 33 I.L.M. 112 [hereinafter DSU]. "If the consultations fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel." *Id.* art. 4.7, 33 I.L.M. at 117. See also THE WTO DISPUTE SETTLEMENT PROCEDURES: A COLLECTION OF THE LEGAL TEXTS 6 (Aug. 1995). Generally, the panel procedures shall not exceed six months. See *id.* art. 12.8. Sixty days after the panel report is given to all the WTO members, it becomes the official ruling of the Dispute Settlement Body (DSB) unless there is a unanimous vote to reject it. See *id.* art. 16.4. Any party to the dispute may appeal by formally notifying the DSB of its decision to do so at anytime during this sixty day time period. See *id.*

39. See WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Bananas: Request for the Establishment of a Panel*, WT/DS27/6 (Apr. 12, 1996).

40. See WTO Secretariat, *WTO Dispute Settlement Panel Reports*, WT/DS27/R/ECU (complaint by Ecuador), WT/DS27/R/GTM (complaint by Guatemala and Honduras), WT/DS27/R/MEX (complaint by Mexico), and WT/DS27/R/USA (complaint by the United States) (May 22, 1997). The Panel concluded that "the EC's import regime for bananas is inconsistent with its obligations under Articles I: 1, III: 4, X: 3 and XII: 1 of the GATT, Articles 1.2 and 1.3 of the Licensing Agreement, and Articles II and XVII of the GATS." WT/DS27/R/USA. The Panel then recommended "the Dispute Settlement Body request the European Communities to bring its import regime for bananas into conformity with its obligations under GATT, the Licensing Agreement and the GATS." *Id.*

41. See WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Bananas: Notification of an Appeal by the European Communities Under Paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*, WT/DS27/9 (June 13, 1997). See also Rodrigo Bustamante, *The Need for a GATT Doctrine of Locus Standi: Why the United States Cannot Stand the European Community's Banana Import Regime*, 6 MINN. J. GLOBAL TRADE 533 (1997).

42. See WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Bananas, Report of the Appellate Body*, WT/DS27/AB/R (Sept. 9, 1997).

43. See *id.* ¶ 132.

DSU, a Member has broad discretion in deciding whether to bring a case under the DSU by deciding if such action would be fruitful.⁴⁴ The AB also agreed with the DSP's statement regarding the consequences flowing from an increased interdependence of the global economy, drawing the conclusion that the EC banana regime, in affecting the world supplies and prices of bananas, would in turn also affect the United States's internal market for bananas.⁴⁵

In concluding its report, the AB recommended that the DSB request the EC to bring the measures found to be inconsistent into conformity with the EC's obligations under the GATT 1994 and the General Agreement on Trade in Services.⁴⁶ The EC was then given a "reasonable period of time" in which to implement the DSB's recommendations, which is usually no longer than fifteen months from the date of adoption of an AB report.⁴⁷ The United States and the G-5 countries argued that full implementation would be practicable within a nine-month period,⁴⁸ while the EC pushed for a period of fifteen months and one week.⁴⁹ In January 8, 1998, the WTO arbitrator gave the EC until January 1, 1999, to comply with the WTO rulings.⁵⁰

The EC presented a partial modification of the DSB recommendations with the adoption of Council Regulation No. 1637/98 on July 20, 1998,⁵¹ which the United States declared as

44. See *id.* ¶ 134-35. The wording of GATT 1994, *supra* note 15, Article XXIII.1, which states, "If any Member should consider . . .", is especially important in determining standing when compared with Article 3.7 of the DSU, *supra* note 38, which states, "Before bringing a case, a Member shall exercise its judgment as to whether action under these procedures would be fruitful."

45. See *European Communities—Regime for the Importation, Sale and Distribution of Bananas*, at ¶ 136.

46. See *id.* ¶ 257. See also DSU, *supra* note 35, art. 19.1 which states that: "Where a panel or Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measures into conformity with that agreement."

47. See DSU, *supra* note 38, art. 21.3(c).

48. See WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Arbitration Under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes*, WT/DS27/15, at ¶ 15 (Jan. 7, 1998).

49. See *id.* ¶ 5.

50. See *id.* The Arbitrator concluded that the "reasonable period of time" for the EU implementation of the DSB recommendations and rulings was fifteen months, not the nine months the G-5 countries argued for.

51. 1998 O.J. (L 210). See generally WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Status Report by the*

inconsistent with the DSB ruling.⁵² The EC later adopted Council Regulation No. 2362/98 in October 28, 1998,⁵³ and announced that they had completed the implementation of the recommendations and rulings as put forth by the DSB.⁵⁴ Once again the United States insisted that the EC had not fully complied, and lodged a complaint with the WTO asserting their rights to have the WTO panel review the consistency of the EC banana regime.⁵⁵

European Communities, Addendum, WT/DS27/17/Add.1 (Sept. 9, 1998). The modifications of the EC banana regime by Council Regulation 1637/98 that were found to be incompatible with the WTO were changed. See Directorate General for Trade, *The US/EU Banana Dispute: Modifications to the EC Banana Regime*, (last modified Nov., 10 1998) <<http://europa.eu.int/comm/dg01/1011banan.htm>>. However, the GATT-bound tariff quota and tariff preference for ACP products inside and outside of the tariff quota had not been contested before the WTO. See *id.* The EC asserts that the quantity set forth for ACP bananas is not an allocation as within a tariff quota, but is actually a limitation of the quantity which can benefit from the Lomé preferential treatment. See *id.*

52. See USTR BARSHEFSKY REACTS TO EC BANANA DECISION, *supra* note 5. U.S. Ambassador Barshefsky criticized the preliminary changes made by the EC to its banana regime saying that they failed to bring the regime in line with the EC's WTO commitments and that the United States would not hesitate to take all available action to protect U.S. interests, including the withdrawal of concessions on EC goods and services. See *id.*

53. 1998 O.J. (L 293) 32.

54. See WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Status Report by the European Communities*, addendum 3, WT/DS27/17/Add.3 (Nov. 13, 1998).

55. The G-5 countries also sought to have the WTO panel review the EC's amended banana regime, but wanted the panel to focus on: (1) the consistency with GATT Article XIII in regards to quantities allocated and conditions of access; (2) the consistency of the EC importer licenses with GATS Articles II and XVII; and (3) the consistency of the tariff quotas with GATT Article I and the WTO Lomé waiver. See WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Recourse to Article 21.5 of the DSU*, WT/DS27/21 (Sept. 9, 1998). The United States along with Ecuador, Honduras, Guatemala, and Mexico (the G-5 countries) asserted their right under Article 21.5 of the WTO Dispute Settlement Understanding, *supra* note 38, which states, "Where there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel." *Id.*

A. *Use and Abuse of the WTO Dispute Settlement Procedures*

The United States announced that the EC's inaction left them no choice but to impose tariffs on selected EC goods.⁵⁶ The United States justified their imposition of these tariffs by asserting that Article 22 of the WTO Dispute Settlement Procedures permits them to suspend concessions to the EC.⁵⁷ The United States defended the imposition of tariffs on EC goods asserting that it is an acceptable compensation for the losses suffered due to the EC banana regime.⁵⁸ The EC countered by claiming that it was an improper unilateral action,⁵⁹ and requested the establishment of a panel⁶⁰ to the WTO based on

56. See U.S. RESPONSE TO EU BANANA IMPORT REGIME, *supra* note 5.

57. Article 22.2 of the DSU, *supra* note 38, states that if the Member concerned fails to bring the measure found to be inconsistent into compliance, or otherwise comply with the recommendations and rulings within the reasonable time, then the party invoking the dispute settlement procedures may request authorization from the DSB to suspend concessions to that Member.

58. See WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Recourse by the United States to Article 22.2 of the DSU*, WT/DS27/43 (Jan. 14, 1999). The United States estimates that the EC's failure to comply with the WTO recommendations resulted in a loss to U.S. exports totaling \$520 million. *See id.* This includes the loss of U.S. exports of goods and services used in the production of Latin American bananas for the EC market, as well as lost profits of the U.S. service suppliers on the distribution and sale of Latin American bananas in the EC market. *See id.*

59. The DSU emphasizes that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties in a dispute . . . is clearly preferred." DSU, *supra* note 38, art. 3.7. By including these terms in the DSU, the members of the GATT explicitly denounced the use of unilateral actions in solving disputes amongst themselves. *See id.* Article 23.2(a) states that Members shall not make a determination to the effect that a violation has occurred. *See id.* The correct steps to follow are through the DSU rules and procedures that leave the ultimate decision up to the DSB. *See id.* See generally William R. Sprance, *The World Trade Organization and the United States' Sovereignty: The Political and Procedural Realities of the System*, 13 AM. U. INT'L L. REV. 1225 (1998). By such actions the U.S. is choosing to ignore its own obligations to the GATT, but by doing so can provoke retaliatory action, which in turn threatens the future existence of the WTO. *See id.* Concerns about the United States leaning toward unilateralism have been voiced by Senator Paul S. Sarbanes, who stated, "In effect, it is the belief that since we are the great superpower, we can set all the rules and insist that others conform to them." Paul S. Sarbanes, *The Danger of Unilateralism: U.S. Interests in the Post-Cold War Era*, 5 BROWN J. OF WORLD AFF. 61 (1998).

60. See WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Request for the Establishment of a Panel by the European Communities*, WT/DS27/40 (Dec. 15, 1998). The panel's mandate would be to find if the

Article 21.5 of the DSU.⁶¹ The EU argued that the correct procedure under the DSU is to have the original panel reconvene to settle the dispute.⁶² In the mean time, Ecuador tired of the maneuvers on both sides, filed its own complaint to the WTO.⁶³ In it, Ecuador requested reactivation of the consultations previously started in September 1998, which had originally ruled on the changes made to the EC banana regime.⁶⁴

Meanwhile, the January 1, 1999, deadline has since come and gone with still no definite end in sight to this mess. Upon seeing no further action by the EC to amend its banana regime, once more the United States requested authorization from the DSB to suspend the application of tariff concessions and obligations to the EC.⁶⁵ As required under DSU Article 4.4, the G-5 countries requested an opportunity to consult with the EC to negotiate a settlement.⁶⁶ The negotiations between the United States and the EC quickly stalled, causing WTO Director-General Renato Ruggiero to intervene by suggesting a compromise proposal.⁶⁷ Both parties agreed to follow the DSU whereby "the U.S. request for suspension of concessions against

EC implementing measures are to be afforded the presumption that they conform to the WTO rules, unless said conformity has been duly challenged under the appropriate DSU procedures. *See id.*

61. The DSU prohibits the authorization of suspension of concessions or other obligations if a covered agreement prohibits such suspension. *See* DSU, *supra* note 38, art. 21.5.

62. *See European Communities—Regime for the Importation, Sale and Distribution of Bananas: Request for the Establishment of a Panel by the European Communities, supra* note 60.

63. *See* WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Request to Reactivate Consultations of 17 September 1998 by Ecuador*, WT/DS27/30 (Nov. 16, 1998).

64. *See id.*

65. *See European Communities—Regime for the Importation, Sale and Distribution of Bananas: Recourse by the United States to Article 22.2 of the DSU, supra* note 58. The position of the United States is that new EC regulations perpetuate the discriminatory aspects of the EC measures that were found to be GATT inconsistent, and the EC has therefore failed to bring the EC banana regime into conformity with its WTO obligations. *Id.*

66. The goals of the G-5's negotiation are to "clarify and discuss in detail . . . the various aspects of the EC's modified banana regime, including their effect on the market, our concerns about their WTO-inconsistency, and ways that the EC might modify its regime in order to produce a satisfactory settlement." WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Request for Consultations by Honduras, Guatemala, Panama, and the United States*, WT/DS158/1 (Jan. 25, 1999).

67. *See* WTO, *What's New: EC, US Accept Ruggiero Compromise on Banana Dispute* (visited Feb. 22, 2000) <<http://www.wto.org/wto/new/dsweb.htm>>.

the EC would be authorized by the DSB only after the decision of an arbitrator on the level of suspension of the concessions.⁶⁸

The EC, still upset by the U.S. threat of tariffs, requested a WTO panel to look into possible WTO inconsistencies of Sections 301-310 of the Trade Act of 1974, which is what the United States used as a basis of its rights to impose the tariffs.⁶⁹ The EC also lodged another request to the WTO objecting to the "level of suspension proposed by the United States in document WT/DS27/43."⁷⁰ Not to be outdone, the United States once again contacted the WTO and requested authorization from the DSB to suspend concessions to the EC pending the Arbitrators' decision on March 2, 1999.⁷¹

However, on March 2, 1999, the Arbitrators informed the DSB that they needed additional information to properly determine the level of suspension of concessions permitted by the United States.⁷² Then on March 4, 1999, the United States stunned the world when they announced that they would begin the process of imposing the tariffs on the EC goods since the deadline was triggered on March 3, 1999.⁷³ In the interim,

68. *Id.* The arbitrator would be the original panel that had examined the EC's banana regime. *See id.* *See also* WTO, *What's New: Statement by DSB Chairman* (visited Feb. 22, 2000) <<http://www.wto.org/wto/new/lo010299.htm>>.

69. *See* WTO Secretariat, *United States—Section 301-310 of the Trade Act of 1974: Request for the Establishment of a Panel by the European Communities*, WT/DS152/11 (Feb. 2, 1999). The EC argued that Section 301-310 is inconsistent with the GATT in that it permits the imposition of strict time limits within which a unilateral determination is to be made that another WTO Member has failed to comply with their WTO obligations. *See id.* Additionally, the EC argued that Section 301-310 imposes trade sanctions on Members. *See id.* *See generally* Scott Storper, *Double Jeopardy's Door Revolves Again in United States v. Dixon: The Untimely Death of the "Same Conduct" Standard*, 49 U. MIAMI L. REV. 881 (1995).

70. *See id.* The main thrust of the EC's argument is that the previous banana regime, found to be inconsistent with the WTO, expired on January 1, 1999. Furthermore, no determination has been made through dispute settlement as to whether the new EC banana regime is inconsistent as well. *See generally* WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Request by the European Communities for Arbitration Under Article 22.6 of the DSU*, WT/DS27/46 (Feb. 3, 1999).

71. *See* WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Recourse by the United States to Article 22.7 of the DSU*, WT/DS27/47 (Feb. 18, 1999). *See also* DSU, *supra* note 38, art. 22.7.

72. *See* WTO Secretariat, *European Communities—Regime for the Importation, Sale and Distribution of Bananas: Arbitration Under Article 22.6 of the DSU: Communication From the Arbitrators*, WT/DS27/48 (Mar. 2, 1999).

73. *See generally* James Cox, *U.S. Imposes Duties Pending Banana Ruling*, USA TODAY, Mar. 4, 1999, at B1. *See also* Sanger, *supra* note 1.

collection of these duties are suspended until the WTO rules on the proper tariff amounts, but importers are required to post bonds to cover the amounts.⁷⁴

In response to the actions taken by both the United States and the EC, WTO Director-General Ruggiero issued a statement on March 8, 1999, calling for the two parties to “seek a solution by mutual agreement and not by imposing rulings on either side.”⁷⁵ He ended this statement by reminding all that:

The real issue is not the credibility of our Dispute Settlement System which is at stake. The system is—and will continue to be—ready to give its legal response to the disputes which are brought to it. It is the users of the system who will put their credibility at stake if they do not act in conformity with the letter and the spirit of the system, which seeks above all to produce mutually acceptable settlements.⁷⁶

B. *Decision by the Arbitrators on Article 22.6 of the DSU*

The eagerly anticipated Arbitrators decision under Article 22.6 was released on April 9, 1999, settling the question of whether the level of suspension imposed by the United States was “equivalent to the level of nullification or impairment”⁷⁷ suffered due to the EC’s banana regime.⁷⁸ The arbitrators found in favor of the U.S. assertions that there was a continuation of the nullification or impairment of the U.S. benefits under the revised EC banana regime.⁷⁹ The focus of the decision then

74. See Cox, *supra* note 73.

75. See WTO, *What’s New: Statement by the Director-General, 8 March 1999* (visited Feb. 22, 2000) <<http://www.wto.org/wto/new/dgstat8.htm>>.

76. *Id.*

77. DSU, *supra* note 38, art. 22.7, 33 I.L.M. at 128.

78. WTO Secretariat, *European Communities-Regime for the Importation, Sale and Distribution of Bananas: Recourse to Arbitration by the European Communities Under Article 22.6 of the DSU, Decision by the Arbitrators*, WT/DS27/ARB (Apr. 9, 1999) [hereinafter Arbitrator’s Decision]. For a discussion of the decision of the arbitrators, see Michael M. Phillips, *WTO Supports U.S. Over EU On Bananas*, WALL ST. J., Apr. 7, 1999, at A3, and David E. Sanger, *Ruling Allows Tariffs by U.S. Over Bananas: But Penalties on Europe Fall Short of Request*, N.Y. TIMES, Apr. 7, 1999, at C21.

79. See Arbitrator’s Decision, *supra* note 78, at ¶ 5.96. The arbitrators found that the reservation of the 857,700 tonne limit on traditional ACP imports was a tariff quota and as such is inconsistent with Article XIII. See *id.* The revised EC regime also created

shifted to whether the level of suspension of concessions was appropriate given the circumstances.⁸⁰ Reiterating that these types of counter-measures were not to be used as punitive measures,⁸¹ the arbitrators looked to the amount of actual impairment suffered by U.S. trade due to the revised EC regime as a basis for their calculations.⁸²

To reach a decision, the arbitrators looked into the issues of "indirect and direct" benefits, service calculations, and company specific effects versus the overall effect on the United States.⁸³ With respect to the indirect and direct benefits, Article XXIII:1 of the GATT and Article 3.3 of the DSU provide that if these benefits are impaired, then measures may be taken.⁸⁴ However, while the direct losses in the trade of U.S. goods and services to the EC may be counted, the loss trade from between other third countries do not even amount to a loss of indirect benefits.⁸⁵ With service calculations, the conclusion reached was that losses in the supply of value-adding service transactions could only be made by the country of origin and not by the United States.⁸⁶ Lastly,

a "de facto less favourable treatment" of license allocation towards U.S. suppliers of wholesale services, thus violating GATS Articles II and XVII. *See id.* ¶ 5.97. Additionally, the criteria stated in order for U.S. service suppliers to acquire the "newcomer" status also contained less than favorable conditions of competition than those for the EC service suppliers. *See id.* This, too, was found to be in violation of GATS Article XVII. *See id.* ¶ 5.97.

80. *See id.* § VI.

81. The arbitrators looked to the language of Article 22.1 for the objectives of these counter-measures which states that they are to be enacted on a temporary basis when the recommended changes are not implemented within a reasonable time. *See id.* ¶ 6.3. The purpose of these counter-measures is to "induce compliance." *Id.*

82. *Id.* § VI(B). The United States tried to argue that included in the calculation of its overall trade loss are the those losses resulting from the export of goods and services with third parties as well as the loss of exports incorporated in the manufacture of the Latin American bananas. *See id.* ¶ 6.12. However, these losses have no bearing on those that occurred in this matter between the EC and the United States. *See id.* The arbitrators were also concerned with "double counting" due to overlapping claims that would result from the same loss in trade from the United States and third parties. *Id.* ¶ 6.15. This would be in direct contradiction with the equivalence standard set out in Article 22 of the DSU, which is that the level of concessions must be equivalent to the level of nullification and impairment suffered, not more. *See id.* ¶ 6.16.

83. *See id.* § VI.

84. *See id.* ¶ 6.7.

85. *See id.* ¶ 6.12.

86. *See id.* ¶ 6.26. The arbitrators emphasized the language in Article XXVIII(b) of the GATS, which provides that the supply of services includes the production, distribution, marketing, sale and delivery of a service. *See id.* Also, Article XXVIII(d), (f), (g), (l)-(n) of the GATS states that the origin of a service supplier is determined on the basis of ownership and control. *See id.* It does not matter at which point of trade the

the arbitrators noted that they needed to determine the aggregate net effects on all U.S. suppliers of wholesale services to the bananas wholesaled in the EC, in order to arrive at the correct value of the benefits involved.⁸⁷

The next step involved was determining the correct levels of impairment and suspensions.⁸⁸ In order to have a fair comparison, the arbitrators compared the value of the relevant EC imports from the United States under the present regime to their value under a WTO-consistent regime.⁸⁹ The differences in the United States's and the arbitrator's calculation boiled down to whether the EC would have its tariff quota and the subsequent impact of the license system.⁹⁰ Looking at the various alternatives, the arbitrators choose as a base for a WTO-consistent regime a global tariff of 2.553 million tonnes (subject to a seventy-five Euro per tonne tariff) and unlimited access for ACP bananas at a zero tariff.⁹¹

The arbitrators then employed this WTO-consistent regime to determine the losses suffered by the United States. The task was therefore to look at what would happen to both the U.S. share of the wholesale trade services in bananas sold to the EC, and to the U.S. share of the import licenses and quota rents.⁹² Bearing all this in mind, the arbitrators determined that the appropriate compensation for the level of nullification and impairment is U.S. \$191.4 million per year, which is consistent with what is required in Article 22.4 of the DSU.⁹³

harm occurred because it is the right of the country of origin to claim harm for actual or potential losses in the supply of service transactions that add value to the bananas up to the free on board stage, and as such, these claims cannot be made by the United States.

87. See Arbitrator's Decision, *supra* note 77, ¶ 6.27.

88. See *id.* § VII.

89. See *id.* ¶ 7.1.

90. See *id.* ¶¶ 7.2 & 7.6.

91. See *id.* ¶ 7.7.

92. See *id.* ¶ 7.8.

93. See *id.* ¶ 8.1. The comparable basis for estimation used by the arbitrators is the impact on the value of relevant EC imports from the United States and not the U.S. firms' costs and profits. See *id.* On April 9, 1999, the U.S. Trade Representative released the final product list on which they would impose the 100% ad valorem duties. See USTR ANNOUNCES FINAL PRODUCT LIST IN BANANAS DISPUTE, U.S.T.R. PRESS RELEASE 99-35 (Apr. 9, 1999) available in <<http://www.ustr.gov/releases/1999/04/99-35.html>> (visited Feb. 27, 2000).

III. LOSS OF BANANAS LEADING TO DRUG PRODUCTION AND TRAFFICKING IN THE CARIBBEAN REGION

A very real threat facing the Caribbean nations is the pervasiveness of drugs in the region.⁹⁴ Many believe, the future of the drug trade in the Caribbean is intimately related to the future of the banana trade.⁹⁵ More specifically, there is a concern that if the protection provided the Caribbean nations by EU banana regime is removed or reduced, these countries will be "thrown into economic chaos."⁹⁶ If Caribbean governments faced with this dilemma allow financial laxity, money laundering may become more prevalent and farmers may start growing alternative cash crops as they have done in Bolivia, Peru and Colombia.⁹⁷

Arguing that a prosperous banana industry was the best bulwark against the spread of drug growing and trafficking in the region, Allan Cruishank, the foreign minister of St. Vincent and the Grenadines stated, "How can we convince our own citizens about the need to combat the production, use and trade in illicit drugs if our banana industry is destroyed?"⁹⁸ This sentiment was echoed in the Windwards where Washington D.C. was criticized on the grounds that "no campaign against drug-trafficking stands a chance of success if growing and transporting drugs is the only game in town."⁹⁹ Disaster is lurking just around the corner, for if the banana industry is abolished "these

94. See generally IVELAW LLOYD GRIFFITH, *DRUGS AND SECURITY IN THE CARIBBEAN: SOVEREIGNTY UNDER SIEGE* (1997).

95. "I want to point out that drug trafficking, money laundering and bananas are all interrelated," said Elizabeth Symon, the British junior minister in charge of the Caribbean. Serge F. Kovaleski & Douglas Farah, *Organized Crime Exercises Clout in Island Nations*, WASH. POST, Feb. 17, 1998, at A01, available in 1998 WL 2468237. "We are trying to keep the islands from the awful downward spiral into drug trafficking and money laundering." *Id.*

96. See Woellert, *supra* note 4.

97. Commonwealth Deputy Secretary-General Sir Humphrey Maud stated, "It is very short-sighted of them (the US) to pursue any policy which could have very grave economic and political consequences for their near neighbours. If you lose your primary source of income, you may be tempted into highly undesirable activities." *Banana's Loss Could Mean Gain for Drugs, Organised Crime*, JAM. GLEANER, July 7, 1998.

98. *EU & US on Collision Course: January Could be Crunch Time in Dispute Over Market Rules*, LATIN AMERICA REGIONAL REPORTS: CARIBBEAN & CENTRAL AMERICA, Nov. 3, 1998, at 7, available in LEXIS, News Library, Allnws File.

99. *WTO Panel Ruling on Banana Market Heralds Bleak Future for Windwards*, LATIN AMERICA REGIONAL REPORTS: CARIBBEAN & CENTRAL AMERICA, Mar. 25, 1997, available in LEXIS, News Library, Allnws File.

economies go bust. And when they cannot grow bananas, they will grow drugs.”¹⁰⁰

A. *U.S. Concerns About Drugs in the Caribbean Region*

The Caribbean Region has been a source of grave concern to the United States regarding the flow of illegal narcotics through the Region. Not only do these Caribbean countries produce a significant amount of marijuana¹⁰¹ they are also “ideally located on the transit routes of cocaine traffickers from the producing centers in South America.”¹⁰²

The Caribbean has been experiencing a “rapid expansion of drug trafficking—resulting from a shift in tactics by the Colombian drug cartels—[which] has begun to corrupt governments, particularly in the smallest nations.”¹⁰³ Unfortunately this expansion coincides with the economic crises experienced by the Caribbean nations due to the sudden downward change in the market for their “legal” regional export, bananas.¹⁰⁴ This loss of banana exports could in turn “push island nations toward becoming offshore banking and tax havens . . . making them all the more attractive to money launderers and drug dealers.”¹⁰⁵

This has led the United States to cultivate close ties with the Caribbean nations through various Aid and Development programs¹⁰⁶ as well as through mutual-legal-assistance treaties.¹⁰⁷

100. Boustany, *supra* note 7.

101. See generally BUREAU OF INTERNATIONAL NARCOTICS & LAW ENFORCEMENT AFFAIRS, U.S. DEPT OF STATE, International Narcotics Control Strategy Report (1998) available at <http://www.state.gov/www/global/narcotics_law/1998_report> (visited Feb. 27, 2000) [hereinafter INCS Report].

102. Jorge I. Domínguez, *Introduction to FROM PIRATES TO DRUG LORDS: THE POST-COLD WAR CARIBBEAN SECURITY ENVIRONMENT 2* (Michael C. Desch, Jorge I. Domínguez, & Andrés Serbin eds.) (1998).

103. Kovalski & Farah, *supra* note 96.

104. See *id.*

105. *Id.*

106. See USIS, U.S. Dep't of State Fact Sheet: Certification for Drug-Producing States, July 1, 1999 (visited Feb. 22, 2000) <<http://www.usembassy.org.uk/drugs17.html>>. See also USAID, U.S. Dep't of State, Congressional Presentation FY 1999 Request: LAC Regional (visited Feb. 22, 2000) <<http://www.info.usaid.gov/pubs/cp99/lac/cp99rsd.htm>>.

107. See GRIFFITH, *supra* note 94, at 213. These treaties provide for the training, asset sharing, intelligence, material and technical support, and interdiction. See also John McCain, *Renewing American Foreign Policy: Values and Strategy*, 5 BROWN J. OF

These Aid and Development programs allow the United States to provide assistance in areas of economic growth, agriculture, population, health, and environment.¹⁰⁸ However there are strings attached to the release of this aid if the benefiting country is a "major" drug-producing and/or drug-transit country.¹⁰⁹ There is a form of "certification" that the benefiting country must meet before the funds are distributed.¹¹⁰

The procedure involved in receiving certification requires that the President of the United States determine whether the country in question has "cooperated fully with the United States, or has taken adequate steps on its own, to achieve the counternarcotics goal and objectives of the 1988 U.N. Drug Convention."¹¹¹ Only after a country has received "full certification" can all aid that was withheld be released.¹¹² If a country fails the certification process, the United States is required to deny the country most forms of non-emergency aid¹¹³ and vote against any proposed loans by multilateral development banks.¹¹⁴

The United States, by virtue of the threat to withhold aid, was able to persuade many of the Caribbean nations to enter into mutual-legal-assistance treaties with them.¹¹⁵ This has caused the feeling amongst many of these nations that "Washington has tried to bully them into joining its war against drugs without providing the resources to do the job."¹¹⁶ The main area of

WORLD AFF. 54 (1998). "Today it is taken for granted that steady U.S. policy promoting and protecting freedom, democratic systems, free markets, and free trade was both right and essential." *Id.*

108. See USAID, *supra* note 106. See also Sarbanes, *supra* note 59, at 62. "Today, the greatest potential threat to the safety and well-being of American in the world we face is . . . transnational problems such as . . . drug-trafficking. These are not the kinds of threats that lend themselves to solo solutions. They require genuine and sustained political and economic cooperation." *Id.*

109. See USIS, *supra* note 106.

110. See *id.*

111. USIS, *supra* note 106.

112. *Id.*

113. See *id.* According to the U.S. Department of State, "Denial of certification requires the United States to deny sales or financing under the Arms Export Control Act; deny non-food assistance under Public Law 480; deny financing by the Export-Import Bank; and withhold most assistance under the [Foreign Assistance Act of 1961] with the exception of specified humanitarian and counternarcotics assistance." *Id.*

114. See *id.*

115. See GRIFFITH, *supra* note 94, at 193.

116. *Caribbean Leaders Ready Complaints List for Clinton Visit*, DOW JONES INT'L NEWS, May 9, 1997.

dissatisfaction with these treaties and agreements is that the United States has impinged too much on national sovereignty¹¹⁷ in trying to maintain their anti-drug strategy for the region while giving too little in return.¹¹⁸

B. Shiprider Agreement

An important tool for the United States to control the movement of international narcotics is its use of the various Maritime Counter-Drug (Shiprider) agreements with the Caribbean nations. These reciprocal agreements allow law enforcement officers of either party to the agreement to conduct operations for the prevention, detection and suppression of drug trafficking in each other's territorial waters.¹¹⁹ The main incentive for these Caribbean nations to enter into these agreements was the "inability of Caribbean countries to tackle the problem of illegal drug trafficking."¹²⁰ One problem in particular is the increasing frequency of "air and sea drops" from the South American drug cartels to their "local criminal partners" in the Caribbean.¹²¹

These Shiprider agreements have come under attack mostly because of the Caribbean countries' perception of the breach of their sovereignty by the United States.¹²² This is due in a large way to the demands by the United States which require "political and bureaucratic adaptations" along with "resource allocations."¹²³ In the case of Barbados and Jamaica, both were reluctant to enter into a Shiprider agreement until the question of sovereignty was settled.¹²⁴

117. See GRIFFITH, *supra* note 94, at 222.

118. See generally Anthony T. Bryan, *The State of the Region: Trends Affecting the Future of Caribbean Security*, in FROM PIRATES TO DRUG LORDS, *supra* note 102, at 45.

119. See generally T & T Shiprider, *supra* note 9. See also *Shiprider Takes Effect*, JAM. GLEANER, Mar. 11, 1998.

120. *Shiprider Takes Effect*, *supra* note 119.

121. *Id.*

122. See Bryan, *supra* note 118. The policy dilemma for small Caribbean countries is that while they cannot curtail the drug trade, the current anti-drug strategies of the United States threaten to impinge on their sovereignty and independent legal systems. See *id.* at 46.

123. See GRIFFITH, *supra* note 94, at 195.

124. See *id.* at 22.

The negotiations with Jamaica led to an agreement¹²⁵ that there will be "no random patrolling," and that the "U.S. authorities [are] required to apply on a 'case-by-case' basis before being allowed, or denied, permission to board and search vessels."¹²⁶ Additionally, these operations will be under the control of Jamaican law enforcement officials according to Jamaican law.¹²⁷ Jamaican Prime Minister P.J. Patterson stated that "in the event of U.S. agents being in 'hot pursuit' of suspected trafficker and cannot apply for permission, they will be allowed into Jamaican waters or airspace but only to maintain contact."¹²⁸ Barbados soon followed suit after lengthy negotiations with the United States, and on June 25, 1997, signed their own "Shiprider" agreement with the United States.¹²⁹

C. U.S.-Caribbean Summit in Barbados, 1997

Realizing the need to strengthen and maintain relations among the Caribbean nations, President Clinton met with the leaders of the Caribbean Community May 10, 1997, for the U.S.-Caribbean Summit.¹³⁰ The focus of this historic summit was the linkage by the U.S. officials of trade to the cooperation on the drug front.¹³¹ There were, however, reminders that the region

125. See Agreement Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking, U.S.-Jam. (entered into force Mar. 10, 1998) K.A.V. 5155 available in 1998 WL 190434 [hereinafter *Jamaican Shiprider*]. While Jamaica signed the agreement on May 6, 1997, it could not be entered into force until domestic legislation to give effect to the agreement was passed by Parliament. The Maritime Drug Trafficking (Suppression) Act which gives effect to the accord, was passed by Parliament in February of 1998. See *Shiprider Takes Effect*, *supra* note 119.

126. See *Jamaica Reaches Drug Accord With U.S.*, REUTERS N. AM. WIRE, May 5, 1997, available in LEXIS, NEWS Library, Allnews File. In other words, the United States Coast Guard vessels and aircraft can now legally enter Jamaica's territorial waters to intercept ships, boats and planes suspected to be transporting drugs to or from the island. See *id.* See also *Shiprider Takes Effect*, *supra* note 119.

127. See *Jamaican Shiprider*, *supra* note 125, art. 7.

128. *Jamaica Reaches Drug Accord With U.S.*, *supra* note 126. The controversy over "hot pursuit" arose when Barbados and Jamaica insisted that the U.S. may not extend its "hot pursuit" of suspected traffickers into the islands' twelve-mile territorial waters. See GRIFFITH, *supra* note 95, at 22.

129. See Agreement Concerning Co-operation in Suppressing Illicit Maritime Drug Trafficking, U.S.-Barb., (entered into force Oct. 11, 1998) K.A.V. 5337(S) available in 1998 WL 773436 [hereinafter *Barbados Shiprider*].

130. See *President Clinton Signed Modest Drug-Fighting and Trade*, SAN ANTONIO EXPRESS-NEWS, May 11, 1997, at 6A.

131. See *Caribbean Leaders Ready Complaints List For Clinton Visit*, DOW JONES

has felt neglected, illustrated by CARICOM chairman, Jamaican Prime Minister P.J. Patterson, who remarked that "no relationship, however valuable, will endure forever if constantly taken for granted."¹³²

When pressed about the role of the United States in the banana dispute, Clinton commented that "the United States supports duty-free access to the EU market for Caribbean bananas—but will continue to oppose preferences that give European marketing and distribution firms an advantage over U.S. companies."¹³³ He also added that the United States was targeting "a discriminatory European system not Caribbean bananas."¹³⁴

At the conclusion of the summit, both Clinton and the Caribbean Heads of Government signed the Partnership for Prosperity and Security in the Caribbean, known as the Bridgetown Accord.¹³⁵ This accord recognized the "inextricable link between trade, economic development, security and prosperity."¹³⁶

D. Criticisms of Summit

Unfortunately, many of the Caribbean leaders complained that the United States has done little to implement the decisions of the summit.¹³⁷ While the summit was to be the start of a "new era of cooperation between the United States and Caricom,"¹³⁸ the United States has not kept up its side of the bargain. The Caribbean nations have fulfilled their end of the agreement by "allowing U.S. law enforcers to pursue suspected drug smugglers into their territorial airspace and waters," while the United States has "acted only in the drug and security areas that are its concern."¹³⁹

INT'L NEWS, May 9, 1997.

132. *President Clinton Signed Modest Drug-Fighting and Trade*, *supra* note 130.

133. *Id.*

134. *Id.*

135. See CARICOM Website, *supra* note 8.

136. *President Clinton Signed Modest Drug-Fighting and Trade*, *supra* note 130.

137. See Carole Landry, *Caribbean Nations Want US to Pay Attention to its "Real Battle"*, AGENCE FRANCE-PRESSE, Apr. 6, 1998, available at 1998 WL 2256415.

138. *Id.*

139. *U.S. Aide Visiting Caribbean Countries Annoyed With U.S.*, DOW JONES NEWS SERVICE, Sept. 14, 1998.

In addition, the United States had pledged to "help the Organization of Eastern Caribbean States join the Inter-American Development Bank and give \$3 million to help diversify the economies of Eastern Caribbean islands hurt by the successful U.S. challenge to their banana regime."¹⁴⁰ Yet sixteen months later these islands are still waiting.

Another sore point for the CARICOM is the seeming reluctance of Congress to "extend NAFTA [sic] benefits to Caribbean countries and the Clinton administration's stand in a trade dispute over bananas as obstacles to economic progress in the region."¹⁴¹ The U.S. anti-drug strategy is being undermined by a lack of attention to the area's economic needs.¹⁴²

E. Caribbean Reaction to the Banana War

The overwhelming belief throughout the Caribbean is that the United States does not care about the detrimental consequences to the Caribbean that will eventually ensue from the United States's stand against the EU over the EC banana regime. This has led the Prime Minister of Dominica, one of the four islands in the Windward group whose economies depend heavily on bananas, to declare that the United States is "determined to damage the region's banana industry."¹⁴³ In fact he was "appalled by this action by the US."¹⁴⁴

Others warned the United States that relations with the Caribbean could be "severely compromised" by challenges to the local banana trade.¹⁴⁵ Incoming CARICOM leader, Kenny Anthony, St. Lucia's Prime Minister, criticized the United States as being "reckless in its efforts to undermine the viability of the

140. *Id.*

141. Dave Williams, *Caribbean Leader Casts U.S. as Obstacle to Economic Progress*, STATES NEWS SERVICE, Sept. 17, 1998.

142. *See id.* "They're inextricably linked, it's a self-defeating approach if you push one hand and not the other." *Id.* (statement of Edwin W. Carrington, CARICOM Secretary General). Any serious disruption to Caribbean exports to Europe would cause economic collapse on banana-growing islands, leading to social unrest even in parts of the region that rely more on tourism than bananas. *See id.*

143. *Id.*

144. *Id.* He further added, "If the European Union capitulates, regional banana exporters will be the ones to suffer. The US is quite aware of the likely social, political and economic consequences." *Id.*

145. *Banana Trade Threatens US/Caribbean Relations—CARICOM Head*, JAM. GLEANER, July 7, 1998.

banana industry."¹⁴⁶ Prime Minister Lester Bird of Antigua and Barbuda was very vocal against the United States "for placing undue pressure on Caribbean countries in the battle against drug trafficking and money laundering."¹⁴⁷

F. St. Vincent: An Example of Increased Drug Production in the Wake of Decreased Banana Production

Hundreds of St. Vincentians are reported to be growing marijuana on the island, with several claiming that they do so because they cannot find legitimate jobs.¹⁴⁸ While the island's cultivation has not yet reached the 5,000 hectares limit, it still is the largest producer and smuggler of marijuana in the eastern Caribbean.¹⁴⁹ Here, the revenue from marijuana production exceeds the national budget.¹⁵⁰ St. Vincent suffers from very high unemployment, but many households have benefited tremendously due mainly to the marijuana trade.¹⁵¹ For example, "people who had shacks now have very good houses. People who couldn't pay the bus fare now own vehicles."¹⁵²

On December 8, 1998, the government of St. Vincent launched a major U.S.-backed marijuana eradication program in the island's mountain region.¹⁵³ Prior to the raids, marijuana farmers and their supporters staged a peaceful picket outside the

146. *Id.*

147. *Bird Attacks US, Europe*, JAM. GLEANER, May 28, 1998. Prime Minister Bird went even further when he stated that:

"if no drugs were transiting this region and no possibility of money laundering, the Caribbean would be relegated to the backwater of the world with not the slightest interest shown in our circumstances unless there was a sudden breakdown in democracy and the rule of law leading to civil unrest, bloodshed and refugees."

Id.

148. *See Island Under Rain on Marijuana Strike Day*, HERALD (St. Vincent & the Grenadines) Dec. 8, 1998, at 7 available at <<http://heraldsvg.com>> (visited Mar. 3, 1999).

149. *See* INCS Report, *supra* note 101.

150. *See The Best Broadcast Transcripts: From Caribbean Radio: 'If You Don't Like us Growing Ganja, Give us Another Crop'*, THE GUARDIAN (LONDON), Dec. 5, 1998, at 19, available in LEXIS, NEWS Library, ALLWLD File.

151. *See id.*

152. *Id.*

153. *See Marijuana Raid Begins Despite Rains*, HERALD (St. Vincent & the Grenadines) Dec. 9, 1998, at 7.

offices of Prime Minister Sir James Mitchell.¹⁵⁴ They protested the planned eradication of their crops, and made known their views about the role of the United States in the raid.¹⁵⁵

The main arguments against the raid are: (1) it creates a lot of damage (people's legal agricultural crops are destroyed along with their houses); (2) there is no real indication whether the chemicals used in the destruction of marijuana plantations are harmful to normal agricultural production; and (3) there "should be some package negotiated with the Americans in order to ensure that the people who will be affected have some alternative means of survival."¹⁵⁶

One million plants are expected to be destroyed by the end of this exercise.¹⁵⁷ The value of a mature plant is about \$1,000 (U.S.) on the New York market according to the most recent estimate by the U.S. Drug Enforcement Agency.¹⁵⁸ The end result of this raid is that "about US\$1 billion in total crops . . . were removed from the streets of some marketplace around the world."¹⁵⁹

IV. BARBADOS' RALLYING CRY: NON-RENEWAL OF SHIPRIDER

Faced with empty promises made by the United States following the Bridgetown Accord and the threatened demise of the banana industry, Barbados has called upon the members of the CARICOM to join together to resolve the issue.¹⁶⁰ The "entire Caribbean was disappointed with the failure of President Clinton to focus on trade and economic issues as promised when he met Caribbean leaders last year, while matters pertaining to justice

154. See *St. Vincent: Marijuana Growers Stage Peaceful Protest Outside PM's Office*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 8, 1998, at pt. 5.

155. See *id.* Among the messages carried on placards were: "Give us jobs or leave us alone"; "Stop the advantage on small nations, Mr. America [slogan as received]" and, "Yankeys [spelling as received] stay home, clean up your front-yard" and "American plants more ganja than the entire Caribbean combined", some of which were stuck along the wire fencing surrounding the complex. *Id.*

156. See *The Best Broadcast Transcripts: From Caribbean Radio*, *supra* note 150. In Nicaragua and Columbia, where the U.S. government is involved in the eradication of drug plantations, there is always some agreement to provide alternative economic support. See *id.*

157. See *St. Vincent Drug Eradication Programme Winds Down*, JAM. GLEANER, Dec. 15, 1998.

158. See *id.*

159. *Id.*

160. See *B'dos Wants Joint Banana/Shiprider Agreement*, *supra* note 10.

and security had been put on a fast track.”¹⁶¹ Barbados has requested that the CARICOM members not renew their Shiprider agreements, if “Washington does not act on the trade issues so important to the small Caribbean countries.”¹⁶² In addition, the Prime Minister of Barbados said, “You cannot expect to have progress in the fight against drugs while that part of the Bridgetown Accord that deals with the banana regime is not being honored.”¹⁶³ Barbados sees it as unacceptable for the United States to bully weaker countries of limited resources into treaties and concessions without providing anything in return.¹⁶⁴

A. *Consequences of Non-Renewal*

The immediate repercussion faced by the Caribbean nations if they refuse to renew the Shiprider agreements is the U.S. threat of withholding economic aid.¹⁶⁵ But this threat does not mean as much today as it once did because at the end of the Cold War, “[f]rom 1985 to 1995, U.S. aid to the Caribbean nations fell by 90 percent, from \$226 million to \$ 22 million.”¹⁶⁶ In addition, the aid that was promised by the Clinton administration after the Bridgetown Accord has not been received, so the threat of withholding will not persuade the CARICOM nations to change their minds.¹⁶⁷ The United States, on the other hand, needs these agreements to secure their borders against the entry of illicit drugs.¹⁶⁸

So the question becomes can the Caribbean nations make this leverage work? Getting these nations to “unite for their own self-interest” is not a sure thing.¹⁶⁹ A recent statement by the CARICOM lashed out against the unilateral action taken by the

161. *Id.*

162. *Barbados Leader Might End Anti-Drug Cooperation With U.S.*, DOW JONES INT’L NEWS, Aug. 15, 1998.

163. *Id.*

164. *See id.*

165. *See* USIS, *supra* note 106.

166. Kovaleski & Farah, *supra* note 95. Now some U.S. officials say they fear drug traffickers are rushing to fill that gap, in some cases focusing their attention on penetrating governments. *See* Williams, *supra* note 141.

167. *See U.S. Aide Visiting Caribbean Countries Annoyed With U.S.*, *supra* note 139.

168. *See generally* INCS Report, *supra* note 101.

169. *See* Geof Brown, *Facing the US ‘Economic Terrorism’*, JAM. GLEANER, Nov. 20, 1998, at A4.

United States in imposing sanctions.¹⁷⁰ In it, the countries of the Caribbean Community “agreed to immediately review the Bridgetown Accord to determine the basis for continued cooperation.”¹⁷¹ If they continue to present a united front against the United States, they will be a force to be reckoned with.

B. *Promised U.S. Aid Package*

Finally, in September 1998, the United States announced a three-year US\$ 4.7 million economic diversification project for the Windward Islands.¹⁷² This program evolved out of the May 10, 1997, U.S.-Caribbean summit in Barbados. The United States official who announced the project’s release admitted that this aid was in response to “a very serious problem in public perceptions in the Eastern Caribbean where we were seen as not only indifferent to, but hostile to, Eastern Caribbean interests.”¹⁷³ Coincidentally, this release of funds came soon after Barbados Prime Minister Owen publicly announced that Barbados would not be renewing their Shiprider agreement.¹⁷⁴ The other concern of the American diplomats in the region is that they have found Caribbean leaders to be “fearful and resentful, wondering whether economic globalization will leave them destitute.”¹⁷⁵

The show of assistance by the United States may be a case of too little, too late. As Prime Minister Anthony put it, “We have experienced a situation where the United States had said one thing and done the very opposite; made one announcement today and the very next day something else has happened. There is now a serious credibility problem. I think distrust is a more appropriate word.”¹⁷⁶ It will take the Caribbean nations a very long time to put the banana issue behind them.¹⁷⁷

170. “That the U.S.’s recent action strikes at the very heart of the partnership with the Caribbean—its security and prosperity—and calls into question the entire partnership agreement.” *Id.*

171. *Id.*

172. See *U.S. Project for Banana States*, CARIBBEAN UPDATE, Nov. 1, 1998, available in LEXIS, News Library, Allnews File.

173. *Id.*

174. See *Barbados Leader Might End Anti-Drug Cooperation With U.S.*, *supra* note 162.

175. Gedda, *supra* note 12.

176. Don Bohning, *Banana Wars Snag Caribbean Island Nations*, MIAMI HERALD, Dec. 23, 1998, at C1.

177. See *id.*

C. CARICOM Takes A Stand

Angry over the United States announcement of the imposition of tariffs and the refusal to end its opposition to the preferential treatment for the Caribbean bananas, the CARICOM leaders decided to take a stand.¹⁷⁸ In their two-day Inter-Sessional Summit held in Suriname on March 4, 1999, the leaders voted to suspend the 1997 Bridgetown trade and security agreement with the United States.¹⁷⁹ One of the reasons voiced for this move was that its declaration would serve as a “stinging and embarrassing rebuke of American action,” which will harm the Caribbean economies even though the Clinton administration denies it.¹⁸⁰

In an effort to undo the damage to its relations with the Caribbean Community, the United States undertook a series of steps to win back some of the ground lost. This began with the hosting of a meeting in Washington on July 22, 1999, to try and clear up any misunderstandings and clarify the issues between the parties.¹⁸¹ Then, on August 6, 1999, President Clinton sent his presidential envoy to the Americas, Kenneth H. MacKay, Jr., to visit the eastern Caribbean nations.¹⁸² MacKay was part of a mission to “stimulate sustained economic integration and development” in this region.¹⁸³ To accomplish this, the U.S.

178. See Bert Wilkinson, *Trade-Caribbean: CARICOM Suspends Treaty With U.S. Over Bananas*, INTER PRESS SERVICE, Mar. 9, 1999.

179. See *id.*

180. *Id.* See also *Caricom Leaders “Deplore” US Banana War Against EU*, BBC SUMMARY OF WORLD BROADCASTS, Mar. 16, 1999, available at LEXIS, News Library, Curnws file. The CARICOM issued a statement which began:

The countries of the Caribbean community have agreed to immediately review the Bridgetown accord to determine the basis for continued cooperation. We, the heads of state and government of the Caribbean community, meeting in Paramaribo, Surinam, deplore the precipitate unilateral action of the United States to impose sanctions against the European Union (EU) over its banana import regime.

Id. CARICOM closed with the observation that “[t]he United States’ recent action thus strikes at the very heart of the partnership with the Caribbean-its security and prosperity-and calls into question the entire partnership agreement.” *Id.*

181. See Rickey Singh, *Washington Meeting on CARICOM-USA Relations*, JAM. GLEANER, July 21, 1999, at A1.

182. See Carmel L. Haynes, *Clinton’s Envoy MacKay Says U.S. Needs Caribbean as Much as, Well, Vice Versa*, BROAD STREET J., Aug. 20, 1999, available at <<http://broadstreetjournal.com>> (visited Feb. 27, 2000).

183. *Id.* In a move calculated to mend the U.S. fences with his hosts, MacKay emphasized that the Caribbean nations were not the target of the dispute between the EU

delegation promised the availability of aid in the amount of US\$30 million to the region, once the Council for Finance and Planning in Washington finally approves it.¹⁸⁴ The final step towards reconciliation with the Caribbean nations came on November 3, 1999, in the form of the passage of the merged African Growth and Opportunity Act and the U.S.-Caribbean Basin Trade Enhancement Act (CBTEA).¹⁸⁵

Unfortunately, these steps have been criticized as being "too little, too late" by many in the Caribbean.¹⁸⁶ It has been approximately two years since the Bridgetown Accord where the United States and President Clinton promised economic assistance.¹⁸⁷ During that time the Caribbean nations lived up to their end, while it has taken the United States this long to get around to "fulfilling" their side of the agreement. Even the CBTEA does not go as far as the Caribbean nations would like, it provides for "temporary" provisions to give the benefits to "certain beneficiary countries."¹⁸⁸

V. CONCLUSION

Regardless of whether the United States intended to hurt the Caribbean nations with its stance in the Banana War, the damage has been done. The actions of the world's two largest trading parties, with their apparent disregard of the negotiation process to resolve disputes, has rubbed off on the Caribbean nations. In turn, these nations, desperate to have the United States resolve their plight, have resorted to the only weapon they have—the threat of not renewing their Shiprider agreements. Whether these nations are ready to face the consequences of possible U.S. retaliation is another matter.

and the United States, and that "the problem had been simple oversight and taking people for granted." *Id.*

184. *See id.* This aid would be used to help with "economic diversification and employment, environmental management, strengthening judicial structures in the region and disaster handling." *Id.*

185. *See* U.S. Department of Commerce, *Statement by U.S. Secretary of Commerce William M. Daley on the Passage of the Africa Growth and Opportunity Act and the Caribbean Basin Trade Enhancement Act*, Nov. 3, 1999, (visited Feb. 27, 2000) <<http://204.193.246.62/public.nsf/docs/A50FD106D4F837988525681F0050E53A>>. *See also* S. 1389, 106th Cong. (1999).

186. *See Clinton Envoy Offers Too Little, Too Late*, BROAD STREET J., Aug. 20, 1999.

187. *See President Clinton Signed Modest Drug-Fighting and Trade*, *supra* note 130.

188. *See* S. 1389, 106th Cong. § 101 (1999).

Resolution of this conflict lies in how badly the United States needs these agreements in the war on drugs. Since the United States did not back down in the dispute against the EU, they may need to find other ways to rebuild relations with the Caribbean. This can only be done by assisting the region economically, starting with complying with the spirit of the Bridgetown Accord with regards to trade, and helping find a viable alternative to drugs in the region. The United States has begun attempts to make these changes, but still more needs to be done.

On the other hand, the Caribbean nations have seen the U.S. response to their threats of not renewing their treaties. It has prompted the United States to offer aid to the Caribbean nations with the promise of more to come. This demonstrates that the United States values keeping the Shiprider agreements alive and validates the decision by CARICOM to use non-renewal as an effective threat. The question remains whether CARICOM will use this threat again against the United States in subsequent negotiations if they believe that they have been slighted. For the moment, it seems highly likely since these Caribbean nations have little more to lose economically. If the United States cuts off aid, they are very likely to disregard all anti-drug treaties in favor of the lure of easy drug money.

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VI. APPENDIX

A. *EC Banana Regime Reform*¹⁸⁹

OLD REGIME (REGULATIONS 404/93 & 1442/93 PLUS BANANA FRAMEWORK AGREEMENT)	WTO FINDINGS	NEW REGIME (REGULATION 404/98, AS AMENDED BY 1637/98, PLUS COMMISSION REGULATION 2362/98)
B licenses	Inconsistent	abolished—now single licensing system for all origins
Allocation of licenses according to a), b), c) marketing functions	Inconsistent	Abolished—new rights to licenses based on proof of actual imports
Quota allocations to some but not all suppliers including allocations to individual traditional ACP countries	Inconsistent – <i>although appellate body recognised WTO compatibility of zero duty preference for traditional ACP quantity</i>	Quotas allocated only to all substantial buyers, ACP tariff preference capped at traditional levels
Transferability of country quotas	Inconsistent	Abolished
Allocation of hurricane licenses to EU/ACP operators	Inconsistent	only on a non-discriminatory basis
Special export certificates to some countries and not to others	Inconsistent	Abolished
aid to Community producers	<i>not challenged</i>	Retained
Bound tariff quota of 2.2 Mt (million tonnes)	Consistent	Retained
add'l quantity of 353,000 tonnes	Autonomous concessions	Retained with duty same as TRQ

189. Directorate General for Trade, *The US/EU Banana Dispute: Modifications to the EC Banana Regime*, tbl. 2 (last modified Nov., 10 1998) <<http://europa.eu.int/comm/dg01/1011banan.htm>>.

*B. USTR's Final Product List*¹⁹⁰

The imposition of 100% duties will apply to products that are both: (1) classified in the subheading of the Harmonized Tariff Schedule of the United States listed above; and (2) the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom. Note that 100% duties will not apply to HTS 85167000, electrothermic coffee or tea makers, for domestic purposes that are produced in Italy. The product descriptions in the table above are provided for the convenience of the reader and are not intended to delimit in any way the scope of the products, which is to be determined by the HTS number.

HTS No.	Product Description
30073050	Bath preparations, other than bath salts
42022215	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
42023210	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics
48055000	Uncoated felt paper and paperboard in rolls or sheets
48192000	Folding cartons, boxes and cases of noncorrugated paper or paperboard
49119120	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
63022190	Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or appliqué work, not napped
85072080	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles
85167100	Electrothermic coffee or tea makers, for domestic purposes (Except Italy)

190. USTR ANNOUNCES FINAL PRODUCT LIST IN BANANAS DISPUTE, U.S.T.R. PRESS RELEASE 99-35 (Apr. 9, 1999) available in <<http://www.ustr.gov/releases/1999/04/99-35.html>> (visited Feb. 27, 2000).

